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(1919, MONTANA SESSION LAWS SIXTEENTH LEGISLATIVE ASSEMBLY, EXTRAORDINARY SESSION, c. 21). An injunction was asked against the enforcement of the act. *Held*, that the act is unconstitutional. *Holter Hardware Co. v. Boyle*, the District Court of the United States for the District of Montana, No. 149 (January, 1920).

For a discussion of this case, see NOTES, p. 838, *supra*.

CONSTRUCTIVE TRUSTS — MISTAKE OF FACT — MONEY LOANED IN IGNORANCE OF THE PREVIOUS INSTITUTION OF BANKRUPTCY PROCEEDINGS AGAINST THE BORROWER. — The defendant was appointed receiver in bankruptcy for a debtor. The next day the plaintiff loaned the debtor £1000, neither party knowing of the receiving order. The money came to the hands of the defendant, and the plaintiff applied for an order requiring the defendant to return the money. *Held*, that the order be made. *Re Thellusson*, 122 L. T. R. 35 (Court of Appeal).

It is occasionally asserted that the courts will require court officers to act strictly in accordance with honesty and fairness irrespective of the obligations of private litigants in similar circumstances. *Ex parte James*, 9 Chan. App. 609; *Ex parte Simmonds*, 16 Q. B. D. 308; *Gillig v. Grant*, 23 App. Div. 596, 49 N. Y. Supp. 78. Thus court officers are not allowed to take advantage of the anomalous rule that money paid under a mistake of law cannot be recovered. See 32 HARV. L. REV. 283. Under the influence of this line of thought, the court in the principal case avoided a discussion of the rights of the parties. But it would seem that this reasoning assumes the point at issue, for surely the receiver should not be held to an ethical standard inconsistent with the rights of the creditors whom he represents. However, as between the creditors and the plaintiff, the latter is entitled to the money. For money paid under a mistake of fact becomes subject to a constructive trust and can be followed as long as it can be identified into the hands of all but a *bona fide* purchaser. *In re Berry et al*, 147 Fed. 208. See 3 POMEROY, EQ. JURIS., 4 ed., §§ 1047, 1048.

It is true that ordinarily a man's financial condition is an extrinsic fact, ignorance of which is no ground for equitable relief. *Dambmann v. Schulting*, 75 N. Y. 55; *In re Hunter-Rand Co.*, 241 Fed. 175. But in the principal case the mistake involved more than the risk of insolvency assumed in every transaction. By the provisions of the English Bankruptcy Act the plaintiff's claim against the debtor is postponed until all the debtor's assets have been applied to claims existing at the date of the receiving order. See ACT 4 & 5 GEO. V., c. 59, § 30. The question is one of degree. See WILLISTON, SALES, § 656. It is submitted that equity should allow recovery to prevent a gratuitous addition, at the plaintiff's expense, to the fund available to creditors.

CORPORATIONS — LIABILITY OF STOCKHOLDER UPON SUBSCRIPTION-CALLS — WHETHER DATE OF PAYMENT NECESSARY FOR VALIDITY OF RESOLUTION FOR A CALL. — The plaintiff corporation sued the defendant stockholder to recover the amount of a call made in respect of the defendant's shares. The defense was that the resolution of the board of directors for the call fixed no date upon which it should be payable. *Held*, that the action be dismissed. *Canadian Motor Sales Corp., Ltd. v. Wilson*, [1920], 1 W. W. R. 282 (Saskatchewan).

In the English cases, upon the authority of which the court rested its decision, either the articles of association or a statute required the resolution to specify the date of payment of the call. *In re Cawley & Co.*, 42 Ch. D. 209; *Johnson v. Lytle's Iron Agency*, 5 Ch. D. 687. But in the principal case there was no intimation that such a provision was contained in any statute, in the articles of association, or in the subscription agreement. The doctrine propounded, therefore, seems to be that a resolution for a call is invalid, as a

matter of general law, unless it fixes the time of payment. Undoubtedly it is convenient that the resolution should specify the date of payment, since interest will run from that time. *McCoy v. The World's Columbian Exposition*, 186 Ill. 356, 57 N. E. 1043; *Gould v. Town of Oneonta*, 71 N. Y. 298. But the effect of a call is merely to mature the liability upon the subscription. *South Milwaukee Co. v. Murphy*, 112 Wis. 614, 88 N. W. 583. See 1 MORAWETZ, PRIVATE CORPORATIONS, 2 ed., §§ 143, 144. And there is no strong reason why, in the absence of a date, the resolution should not be treated as fixing the time of payment to be upon demand. This view has been taken in this country and would seem to give a more sensible result. *Western Improvement Co. v. Des Moines National Bank*, 103 Iowa, 455, 72 N. W. 657. See 1 COOK, CORPORATIONS, 6 ed., §§ 115, 116.

**CRIMINAL LAW — JURISDICTION — BLOW IN OWN COUNTY AND DEATH IN ANOTHER.** — Blows were struck by the defendant in county A, from the effects of which the victim died in county B. The defendant was tried and convicted in county B under a statute which provided that where a homicide was committed over two counties that the venue might be laid in either. The state constitution, however, assures the accused of a fair trial in the county where the offense was committed. *Held*, that the conviction be sustained. *State v. Criquei*, 185 Pac. 1063 (Kan.).

For a discussion of the principles involved, see NOTES, p. 843, *supra*.

**DAMAGES — MEASURE OF DAMAGES — DUTY OF INNOCENT PARTY TO ACCEPT OFFER OF DEFAULTING PARTY IN MITIGATION OF DAMAGES.** — The defendant contracted to sell the plaintiff a quantity of silk "delivery as required" during a period of nine months, payment to be made for each installment within one month of delivery. Owing to a mishap, payment for the first installment delivered was delayed about three weeks and the defendant thereupon refused to go ahead with future deliveries unless cash were paid. This the plaintiff refused to do; and he brought an action for breach of contract, claiming as damages the difference between the contract price and the market price at the time for performance. *Held*, that his damages be limited to the expense he would have incurred had he accepted the defendants' offer. *Payzu, Ltd. v. Saunders*, [1919] 2 K. B. 581.

For a discussion of this case, see NOTES, p. 856, *supra*.

**DOMICILE — EVIDENCE OF INTENT TO CHANGE AS BETWEEN TWO RESIDENCES.** — The testator, having both a city and a country residence, with domicile at the latter, instructed his attorney to declare the former his residence in a will reading: "I, William D. Winsor, of the city of Philadelphia, etc." A statute required wills to be probated within the county where the testator had his "family or principal residence" (1917 PENN. LAWS, 148, § 4). Probate was granted in Philadelphia and the register of wills of the county where the country home was situated appealed. *Held*, that the appeal be dismissed. *In re Winsor's Estate*, 107 Atl. 888 (Pa.).

However many residences the testator may have, there is but one domicile. *Somerville v. Lord Somerville*, 5 Ves. 750; *Hairston, Jr. v. Hairston*, 27 Miss. 704. To change the domicile three things must concur: first, an abandonment of the former domicile; second, actual residence; third, the intention to establish a home. See STORY, CONFL. LAWS, § 44. Residence in fact without more, however, does not constitute that "family or principal residence" which in such a statute should be construed to mean domicile. See JACOBS, DOMICILE, § 73. Nor between two residences can the mere willing change the domicile, for the intent is a fact determinable from all the circumstances and a declaration is of slight weight as evidence. *In re Harkness' Estate*, 183 App.